

SENATE CS FOR CS FOR HOUSE BILL NO. 318(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/12/06

Referred: Finance

Sponsor(s): REPRESENTATIVES MCGUIRE, HOLM AND HAWKER, Stoltze, Gatto, Wilson, Kohring, LeDoux, Dahlstrom, Kelly, Anderson, Olson, Lynn, Elkins, Foster, Kapsner, Samuels, Ramras, Meyer, Seaton, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 **"An Act limiting the exercise of eminent domain."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
4 to read:

5 LEGISLATIVE INTENT AND FINDINGS. (a) The legislature finds that

6 (1) the United States Supreme Court decision in Kelo v. City of New London,
7 545 U.S. ___, 125 S.Ct. 2655, 162 L. Ed. 2d 439 (2005) demonstrates that an overly
8 expansive application of eminent domain powers can be a threat to the property rights of all
9 private property owners;

10 (2) it is necessary to provide clarification regarding the exercise of eminent
11 domain in the following two situations:

12 (A) the taking of private property if the purpose is to transfer the
13 property to another private person for economic development;

14 (B) the taking of a landowner's personal residence to develop an indoor
15 or outdoor recreational facility or project.

1 (b) In recognizing that many public projects will have economic effects, the
2 legislature intends by this Act not to

3 (1) restrict those public uses already recognized in state law merely because
4 the project may have an associated economic effect; or

5 (2) provide an absolute bar on transfers of land to private entities, but to place
6 restrictions on when such transfers occur.

7 (c) In this section, "economic development" means development of property for a
8 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
9 employment.

10 * **Sec. 2.** AS 09.55.240(a) is amended to read:

11 (a) **Except as provided in (d) and (e) of this section, the** [THE] right of
12 eminent domain may be exercised for the following public uses:

13 (1) all public uses authorized by the government of the United States;

14 (2) public buildings and grounds for the use of the state and all other
15 public uses authorized by the legislature of the state;

16 (3) public buildings and grounds for the use of an organized or
17 unorganized borough, city, town, village, school district, or other municipal division,
18 whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes
19 conducting water, heat, or gas for the use of the inhabitants of an organized or
20 unorganized borough, city, town, or other municipal division, whether incorporated or
21 unincorporated; raising the banks of streams, removing obstructions from them, and
22 widening, deepening, or straightening their channels; **and** roads, streets, and alleys,
23 and all other public uses for the benefit of an organized or unorganized borough, city,
24 town, or other municipal division whether incorporated or unincorporated, or its
25 inhabitants, which may be authorized by the legislature;

26 (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds,
27 private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts,
28 and pipes for public transportation, supplying mines and farming neighborhoods with
29 water, and draining and reclaiming land, and for floating logs and lumber on streams
30 not navigable, and sites for reservoirs necessary for collecting and storing water;

31 (5) roads, tunnels, ditches, flumes, pipes, and dumping places for

1 working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of
 2 tailings or refuse matter from mines; also an occupancy in common by the owners or
 3 possessors of different mines of any place for the flow, deposit, or conduct of tailings
 4 or refuse matter from their several mines, and sites for reservoirs necessary for
 5 collecting and storing water;

6 (6) private roads leading from highways to residences, mines, or farms;

7 (7) telephone lines;

8 **(8) fiberoptic lines;**

9 **(9)** [(8)] telegraph lines;

10 **(10)** [(9)] sewerage of an organized or unorganized borough, city,
 11 town, village, or other municipal division, whether incorporated or unincorporated, or
 12 a subdivision of it, or of a settlement consisting of not less than 10 families, or of
 13 public buildings belonging to the state or to a college or university;

14 **(11)** [(10)] tramway lines;

15 **(12)** [(11)] electric power lines;

16 **(13)** [(12)] for the location of pipelines for gathering, transmitting,
 17 transporting, storing, or delivering natural or artificial gas or oil or any liquid or
 18 gaseous hydrocarbons, including, but not limited to, pumping stations, terminals,
 19 storage tanks, or reservoirs, and related installations.

20 * **Sec. 3.** AS 09.55.240 is amended by adding new subsections to read:

21 (d) The power of eminent domain may not be exercised to acquire private
 22 property from a private person for the purpose of transferring title to the property to
 23 another private person for economic development purposes. This subsection does not
 24 apply to transfers of private property to another private person if one or more of the
 25 following apply:

26 (1) the landowner consents, either before or after a condemnation
 27 proceeding has been filed, to the use of the property for a private commercial
 28 enterprise or other economic development;

29 (2) the private person has been expressly authorized by statute either to
 30 exercise the power of eminent domain, or to receive an interest in land acquired by the
 31 exercise of eminent domain;

1 (3) the transferred property is used for a private way of necessity to
2 permit essential access for extraction or use of resources;

3 (4) the acquisition is used, in part, for leasing property to a private
4 person that occupies a portion of public property or a public facility, including a
5 private business that occupies a portion of an airport, port, or public building;

6 (5) the property is transferred to a person by oil and gas lease under
7 AS 38.05.180;

8 (6) the property is transferred to a common carrier.

9 (e) The power of eminent domain may not be exercised for the purpose of
10 developing a recreational facility or project if the property to be acquired includes an
11 individual landowner's personal residence or that portion of an individual's property
12 attached to and within 250 linear feet of an individual landowner's personal residence
13 unless the landowner consents either before or after a condemnation proceeding has
14 been filed.

15 (f) Notwithstanding the limitations on the power of eminent domain in (d) and
16 (e) of this section, the legislature may approve the exercise of eminent domain against
17 private property in an Act, the subject of which is limited to the transfer of the
18 property for a purpose otherwise restricted under (d) or (e) of this section.

19 (g) The power of eminent domain may only be delegated by statute.

20 (h) In this section,

21 (1) "common carrier" has the meaning given in AS 04.16.125;

22 (2) "economic development" means development of property for a
23 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
24 employment;

25 (3) "personal residence" means a structure that is the dwelling place of
26 an individual that

27 (A) must be used by the owner or beneficiary of a trust holding
28 legal title to the structure as a dwelling unit, as opposed to a rental, storage, or
29 other commercial space;

30 (B) must be inhabited by the owner, prior owner, or beneficiary
31 of a trust holding legal title to the structure for at least 90 days during the 12-

1 month period immediately before the date an action for the exercise of the
2 power of eminent domain is filed;

3 (C) must constitute an ordinary home for general living
4 purposes, as opposed to a dwelling used only for seasonal recreational or
5 temporary purposes; and

6 (D) may not have been constructed, placed, or occupied for the
7 purpose of avoiding eminent domain proceedings;

8 (4) "private person" means a person that is not a public corporation as
9 defined in AS 45.77.020 or a government as defined in AS 11.81.900;

10 (5) "recreational facility or project"

11 (A) means a facility or project, the primary purpose of which is
12 recreational;

13 (B) includes a park, trail or pedestrian pathway, greenbelt,
14 amusement park, fresh water boat harbor, sports facility, playground,
15 infrastructure, or other facility related to or in support of an indoor or outdoor
16 recreational facility or project;

17 (C) does not include

18 (i) a highway, sidewalk, or path within the right-of-way
19 of a highway;

20 (ii) a path, trail, or lane used as a safe route to a school
21 program;

22 (iii) a wayside or rest stop;

23 (iv) a development, the primary purpose of which is not
24 recreational, such as a path, trail, or lane developed to reduce
25 congestion, or to encourage use of an alternate, gas-saving mode of
26 transportation;

27 (v) a path or trail to or between villages or from a
28 village to a facility or resource;

29 (vi) a stormwater retention or treatment facility or
30 wetland, habitat, or other acquisition required to obtain a permit for a
31 highway, airport, or other public project;

(vii) a taking under AS 19.05.110, 19.05.120, AS 19.22.020, AS 27.21.300, AS 35.20.040, 35.20.050, or AS 41.35.060;

(viii) a taking not prohibited by law before January 1, 2007, under AS 41.21; and

(ix) a path, trail, road, or site for which no reasonable alternative exists and which is necessary to preserve or establish public access to or along publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water.

* **Sec. 4.** AS 29.35.030(a) is amended to read:

(a) **Except as provided in (c) of this section, a** [A] municipality may, only within its boundaries, exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the municipality under the procedures set out in AS 09.55.250 - 09.55.460. In the case of a second class city, the exercise of the power of eminent domain or declaration of taking must be by ordinance that is submitted to the voters at the next general election or at a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance.

* **Sec. 5.** AS 29.35.030 is amended by adding new subsections to read:

(c) The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development, except as provided by AS 09.55.240(d)(1) - (6), and may not be exercised for purposes expressed in AS 09.55.240(e). However, a municipality may exercise the power of eminent domain to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development if

(1) the municipality does not delegate the power of eminent domain to another person;

(2) before issuing the notice in (3) of this subsection, the municipality makes a good faith effort to negotiate the purchase of the property;

1 (3) written notice is provided at least 90 days before the public hearing
2 to each owner of land that may be affected by the exercise of eminent domain;

3 (4) the municipality holds a public hearing on the exercise of eminent
4 domain after adequate public notice;

5 (5) the governing body of the municipality approves the exercise of
6 eminent domain by a two-thirds majority vote; and

7 (6) in the case of a second class city, the governing body of the city
8 adopts an ordinance by a two-thirds majority vote, the ordinance is submitted to the
9 voters for approval at the next general election or at a special election called for that
10 purpose, and the exercise of eminent domain is approved by a majority of the votes on
11 the question.

12 (d) In this section,

13 (1) "economic development" has the meaning given in AS 09.55.240;

14 (2) "private person" has the meaning given in AS 09.55.240.

15 * **Sec. 6.** The uncoded law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** This Act applies only to condemnation actions filed on or after the
18 effective date of this Act.